

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER WR 2009 –00XX-DWR

CEASE AND DESIST ORDER

In the Matter of Unauthorized Diversion and Violation of Terms and Conditions of
Licenses 3697, 4216, 4729A, and 5559 (Applications 10795, 14178, 13684A, 13384)

by

GALLO GLASS COMPANY

SOURCE: Russian River Underflow

COUNTY: Sonoma

The State Water Resources Control Board (State Water Board or Board) is authorized under Water Code section 1831 to issue a Cease and Desist Order (CDO) requiring Gallo Glass Company (Gallo) to cease their unauthorized diversion, collection and use of water in violation of one or more conditions in Licenses 3697, 4216, 4729A, and 5559.

Gallo is alleged to have violated or is threatening to violate Water Code section 1831, which provides:

The State Water Board is authorized to issue a Cease and Desist Order (CDO) when it determines that any person is violating or threatening to violate any of the following:

- (1) The prohibition set forth in section 1062 against the diversion or use of water subject to division 2 (commencing with section 1000) of the Water Code other than as authorized by division 2.
- (2) Any term or condition of a permit, license, certificate, or registration issued under division 2 of the Water Code.
- (3) Any decision or order of the Board issued under part 2 (commencing with section 1200) of division 2 of the Water Code, section 275, or article 7 (commencing with section 13550) of chapter 7 of division 7 of the Water Code, in which decision or order the person to whom the cease and desist order will be issued, or a predecessor in interest to that person, was named as a party directly affected by the decision or order.

On {DATE}, and in accordance with the provisions of section 1834 of the California Water Code, the State Water Board, Division of Water Rights (Division) provided notice of the CDO against Gallo for the violation and threatened violation of the prohibition against unauthorized diversion and use of water. Pursuant to State Water Board Resolution 2007-0057, the Deputy Director for Water Rights is authorized to issue a notice of cease and desist, and when a hearing has not been timely requested, issue a Cease and Desist Order in accordance with Water Code section 1831 et seq. State Water Board Resolution 2007-0057 also authorizes redelegation of this authority from the Deputy Director for Water Rights to the Assistant Deputy Director for Water Rights. This authority has been redelegated.

FACTS AND INFORMATION

The facts and information upon which this CDO is based are as follows:

1. Records of the Sonoma County Assessor's Office show that Gallo is the current owner of Sonoma County Assessor's Parcel numbers 110-200-002, 110-200-004, and 110-230-008 and has owned the properties since May 31, 1996. Aerial photographs show a pit reservoir is located on parcel 110-200-002. The reservoir has been in existence since at least 1997.
2. By letter dated July 5, 2005, the Division of Water Rights (Division) notified property owners within the Russian River watershed in Sonoma County whose property contained reservoirs that, according to Division records, they did not have a water right authorizing the storage of water. The letter included a questionnaire seeking information about the existing reservoir, source of water, current water usage, and any existing basis of water right, when applicable. Each party receiving the questionnaire was requested to complete and return the form to the Division. The Division's letter also informed recipients of the State Water Board's discretionary authority to initiate enforcement action for any unauthorized diversion without further notice. Gallo is one of the contacted property owners.
3. Gallo responded to the July 5, 2005 letter and on April 9, 2008, Division staff conducted an inspection of the Gallo property, located at 8900 and 9015 Westside Road, near Healdsburg. Division staff observed the pit reservoir constructed near the top of the watershed. The 8.2 surface-acre reservoir was estimated to have a capacity of 250 acre-feet and a reported depth of 45 feet. During the inspection Division staff was informed that water was diverted from the Russian River, approximately one mile away, and pumped to fill the reservoir. Division staff identified Licenses 3697, 4216, 4729A, and 5559 associated with the property and determined that these summer irrigation rights (May 1 to December 1) did not include collection to storage or a diversion season that allowed diversion for frost protection usage from March 15 through April 30. A second inspection was conducted on November 6, 2008 to review compliance with the associated water right licenses. The reservoir was storing water during each of the two inspections and Gallo's representatives confirmed that the reservoir was used for frost protection, in addition to vineyard irrigation and heat control. Additionally, Division staff noted that the point of diversion has been relocated from a diversion pump on the bank of the Russian River to an offset well that draws Russian River subflow. The well is located approximately 100-200 feet north of the river. Division staff also found that the current 395 acre place of use exceeds the places of use defined within the licenses by 195 acres.
4. The water being directly diverted to storage in the reservoir is subject to the State Water Board's permitting authority. The Division has no record of a water right authorizing direct diversion of water from the Russian River for frost protection use, or to storage in the reservoir [outside of the licensed diversion season] and Gallo did not provide evidence supporting an existing basis of right. Gallo has directly diverted water and/or has diverted to storage and used stored water without a basis of right constituting an unauthorized diversion and use of water.
5. Additionally, the point of diversion and place of use are not in compliance with the existing water right licenses and constitute a violation of the terms and conditions of those licenses.

6. On October 27, 2008, Wagner & Bonsignore, a consulting engineer, contacted and informed Division staff that Gallo intended to file a new Water Right Application for direct diversion and storage in the existing offstream reservoir for frost protection and possibly irrigation use on the vineyard. They also indicated they would be filing petitions to address the point of diversion and place of use issues. Division staff granted the consultant until January 1, 2009 to file the application, petitions, etc., and advised that Gallo was not immune from enforcement at the discretion of the State Water Board. On January 30, 2009, Application 31743 and Petitions for changes in Licenses 3697, 4216, 4729A, and 5559 were filed.

IT IS HEREBY ORDERED, pursuant to sections 1831 through 1836 of the Water Code, that Gallo shall cease the unauthorized diversion of water from the Russian River during the period November 1 to May 1 of the succeeding year and shall pursue the following schedule of corrective actions and satisfy the time schedules outlined herein:

1. Gallo shall, within **60 days** of the date of this order, have a registered Civil Engineer perform a survey of the reservoir to establish the existing capacity of the reservoir. The engineer shall also design and install a staff gauge that correlates the depth vs. capacity relationship, for the purpose of determining the capacity of the reservoir at varying water levels in the reservoir. Additionally, Gallo shall install a meter on the line from the pump to the reservoir, a meter on the line(s) from the reservoir to the place of use, and create a record charting the dates and amounts of water pumped to and from the reservoir.
2. No later than **90 days** from the date of this order, Gallo shall submit to the Division a copy of the capacity survey, the depth vs. capacity relationship curves (chart), the chart showing dates and amounts of water pumped and supplied to the place of use and photographic evidence that a staff gauge and meters have been installed.
3. Following installation of the monitoring equipment, Gallo shall maintain a record of the monthly staff gauge readings of the reservoir and daily pumping amounts to and from the reservoir. Until a permit is issued pursuant to Application 31743, the reservoir system shall be operated such that the monitoring records show that no water other than the reasonable amounts authorized under Licenses 3697, 4216, 4729A, and 5559 is being diverted by Gallo and the storage level in the reservoir shall not increase, except for incident precipitation, during the duration of the December to May non-diversion season. If additional water is needed for frost protection or storage purposes, Gallo shall purchase the water from a party having valid rights or shall seek a Temporary permit in accord with Water Code Section 1425 etc.
4. Gallo shall diligently pursue processing of Application 31743 and the petitions filed for changes to Licenses 3697, 4216, 4729A, and 5559 with the Division by satisfying all Division requests for information, environmental documents, maps, and fees within the designated time frames, or any extension of time granted by the Division.
5. Gallo shall comply with any written directive of the Assistant Deputy Director for Water Rights regarding the unauthorized diversion of water, modifications to monitoring of diversions, or changes to plans submitted in compliance with this order and submit the changes within the time frames specified, until such time as the State Water Board issues a water right permit or directs otherwise.

In the event that Gallo fails to comply with the requirements, Gallo shall be in violation of this CDO and subject to administrative civil liability and further enforcement actions as described below:

Failure of any person to comply with a CDO issued by the State Water Board pursuant to this chapter may subject that person to further enforcement action, including assessment of civil liability of up to one thousand dollars a day and referral to the Attorney General for the issuance of prohibitory or mandatory injunctive relief as appropriate, including a temporary restraining order, preliminary injunction, or permanent injunction. (Wat. Code, § 1845, subd. (a).)

STATE WATER RESOURCES CONTROL BOARD

*James W. Kassel,
Assistant Deputy Director for Water Rights*

Dated:

